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IN THE

Supreme Court of the United States

October Term, 1947

No. 178-183

IN THE MATTER OF THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, *Debtor.*

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, as Trustee, Etc., Et Al., *Petitioners,*
vs.
J. HAMILTON CHESTON, Et Al., Etc., *Respondents.*
No. 9203

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, as Trustee, Etc., Et Al., *Petitioners,*
vs.
METROPOLITAN LIFE INSURANCE COMPANY, *Respondent.*
No. 9204

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, as Trustee, Etc., Et Al., *Petitioners,*
vs.
CENTRAL HANOVER BANK AND TRUST COMPANY, Et Al., as Trustees, Etc., *Respondents,*
No. 9205

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, as Trustee, Etc., Et Al., *Petitioners,*
vs.
THE NATIONAL CITY BANK OF NEW YORK, as Trustee, Etc., *Respondent.*
No. 9206

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, as Trustee, Etc., Et Al., *Petitioners,*
vs.
JOHN C. TRAPHAGEN, Et Al., Etc., *Respondents.*
No. 9207

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, as Trustee, Etc., Et Al., *Petitioners,*
vs.
JAMES G. BLAINE, Et Al., Etc., *Respondents.*
No. 9208

REPLY BRIEF OF THE PROTECTIVE COMMITTEE FOR THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY 7% AND 6% PREFERRED STOCK.

CARTER H. HARRISON, Jr., et al.,
as the Protective Committee for The Chicago, Rock Island and Pacific Railway Company 7% and 6% Preferred Stock.

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Of Counsel

McCORMICK AND HENDERSON, INC., CHICAGO

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REPLY BRIEF OF THE PROTECTIVE COMMITTEE FOR THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY 7% AND 6% PREFERRED STOCK.

Carter H. Harrison, Jr., Et. Al., as The Protective Committee for the Chicago, Rock Island and Pacific Railway Company 7% and 6% Preferred Stock, in reply to some of the assertions, arguments and points of the Respondents' Brief, respectfully represent to the Court:

I.

On page 44 of their brief in opposition to the petition for Writ of Certiorari, Respondents say:

> "Clearly one purpose of the requirement of Subsection (e) of Section 77, that the District Court state its 'reasons' for its decision was in order to permit an adequate review of the decision. This requirement of Section 77 for a statement of 'reasons' for refusal to confirm is not unique. Under Subsection (e), if the judge 'shall not approve the plan he shall file an opinion stating his conclusions and reasons therefor'. So, also, under the same Subsection, if 'the judge shall approve the plan, he shall file an opinion stating his conclusions and the reasons therefor.' One obvious purpose in each instance was to have adequate statements of the 'reasons' for the court's action in order to permit a proper review.
>
> "It would be the height of absurdity to say that when the statute requires a statement of 'reasons' to support 'conclusions' a statement of 'reasons' which does not afford the slightest legal basis for the 'conclusions' can sustain an order which purports to rest on such 'conclusions'.

Subsection (e), at the end of the next-to-the-last paragraph, provides:

> "If the judge shall not confirm the plan he shall file an opinion with a statement of his conclusions and his reasons therefor, and enter an order in which he shall either dismiss the proceedings or, in his discretion, and on the motion of any party in interest, *refer the case back to the Commission* for further proceedings, including the consideration or modifications of the plan or the proposal of new plans." (Italics ours)

It is very apparent that where the judge refuses to confirm the plan and refers the case back to the Commission for further proceedings the sole purpose of the Congress in requiring the judge to file an opinion with a statement

of his conclusions and his reasons therefor was to enable the Commission, when it had the case back before it for further proceedings, to have the benefit of the judge's opinion, his statement of his conclusions and his reasons therefor, in refusing to confirm the plan. Since there is no right of appeal from the order of the District Court in refusing to confirm a plan of reorganization under Section 77 (but only from an order confirming a plan), it could not have been the intent of the Congress that the purpose of requiring the District judge to file an opinion with a statement of his conclusions and his reasons therefor was to permit a review by an Appellate Court of the Court's action in refusing to confirm a plan of reorganization.

Since the filing of the petition for Writ of Certiorari in this case, the Committee on the Judiciary of the House of Representatives of the United States, on July 15, 1947, favorably reported HR 3980, with the recommendation that said Bill, with certain clarifying amendments, do pass (Report No. 923, Eightieth Congress, First Session). In that report a statement of intent of the Congress, that no appeal lies from an order of the District judge refusing to confirm a plan of reorganization, is forcefully stated at page 8 of the aforesaid H. Report 923, namely:

> "In the Rock Island case the plan was rejected by an overwhelming large vote by those holders of Convertible Bonds who voted thereon (the Convertible Bonds were issued in the aggregate total principal amount of about $32,000,000.00 in 1930 with the approval of the Commission).
>
> "The District Judge found that the Rock Island plan had *not* been accepted by or on behalf of this class of creditors to which submission was required under the statute. Moreover, he did *not* find that he was satisfied that the plan made 'adequate provision for fair and equitable treatment for the interests or claims' of those bondholders who rejected it, or that such rejection was not 'reasonably justified'. He found

exactly the opposite as to each of these prerequisites to confirmation. Accordingly, the District Judge refused to confirm the plan and (pursuant to the statute) filed his opinion with his statement of his conclusions and reasons therefor and entered an order referring the case back to the Commission 'for further proceedings, including the consideration of modifications of the plan or the proposal of new plans.''

''However, the Circuit Court of Appeals held in effect on the appeals from that order that the District judge had no power under the statute to refuse to confirm a rejected plan *unless* the classes of creditors who rejected it had affirmatively established that their rejection thereof was reasonably justified. No such requirement was written into the statute, nor does any basis appear for construing any such intent by Congress. The discretionary power granted by the statute to the District Judge to overrule the rejection of the plan by any class of security holders to which submission was required was intended to be exercised only 'if he'—i.e., the District Judge—'is satisfied and finds after hearing that it makes adequate provision for fair and equitable treatment for the interests or claims of those rejecting it' etc. The opinion of the Circuit Court of Appeals appears to be a clear misconstruction of the quoted provisions of Subsection (e).''[1]

II.

The intent of Congress was to preserve railroads for their ownership.

In H. Report 923, Eightieth Congress, First Session, the Committee on the Judiciary of the House of Representatives of the United States, on page 1, said:

''H.R. 3980 concerns itself with both present and future railroad financial reorganization. It is an im-

[1] A substantially identical Bill (S. 249, with amendments) was favorably reported by the Committee on Interstate and Foreign Commerce of the United States Senate on July 3, 1947 (Senate Report No. 432, Eightieth Congress, First Session).

mediate outgrowth of legislation passed at the close of the Seventy-ninth Congress (S. 1253) and subsequently pocket-vetoed by the President, that the present Congress reenact such legislation 'with certain modifications' to meet his views. The need for the reforms embodied in this and predecessor bills arises from two main circumstances: the incredible muddle of the proceedings under Section 77 of the Bankruptcy Act and the growth of the forfeiture doctrine as expounded and effectuated in those proceedings. The cumbersome and lethal procedure resulting from this construction of 'An Act For The Relief of Debtors' has caused wide-spread and shocking extinguishment of investments in those carriers already exceeding a billion dollars, and if unchecked they will finally exceed two billion dollars."

And at page 2 of said Report:

"Although all these laws were intended by Congress for the preservation of our railroads and their ownership, the theory has appeared to prevail that the capitalization of companies in Section 77 proceedings should in all cases be drastically reduced. That is what has been done consistently and persistently.

"*This tragic, unintended consequence of a law enacted for the relief of depression-stricken debtor railroads* resulted primarily from the Interstate Commerce Commission's construing and applying the statute in such a manner as to make its estimate of future earnings of the roads the controlling factor in determining their limits of permissible capitalization. Such forecasts of earnings were made in 1939 and 1940 in the case of practically all railroad reorganizations, and necessarily (and in some cases expressly) those estimates were based largely on a consideration of the income during depression years. Thereafter, the Commission persistently held to its original determinations of the limits of capitalization it proposed for these railroads, despite the fact that radical economic and financial improvement during the subsequent years made such restricted capitalizations, and the conse-

quent elimination of certain junior bondholders and all stockholders, patently indefensible.'"[2] (Italics ours)

Apropos of what the Commission said in the Missouri Pacific Railway Company, Debtor, case, "the Commission has consistently refrained from volunteering its views on new or changed conditions," in H. Report 923, at page 7, appears the following:

> "In a kind of Alphonse and Gaston act, the Court and the Commission have been bowing to each other and saying 'you first' on the question of revision of plans. The Commission has taken the position that once it has certified a plan to the court, its responsibility ends until and unless the court refers the plan back to it for further proceedings. The Commission has steadfastly held to the view that inasmuch as it was not so directed by Section 77 (that statute being silent on the matter) it should not request or even suggest to the court that a plan once approved and certified to the court should be referred back to the Commission for reexamination in the light of changed conditions. And this has remained true, regardless of how inequitable and outmoded the plan has become by reason of such changes. On the other hand the courts (including the Supreme Court) have persistently said that if there was substantial evidence in the record to support the plan, they will not disturb it. As a consequence

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[2] The memorandum brief of the Interstate Commerce Commission filed in the United States Circuit Court of Appeals for the 8th Circuit, Nos. 13367-73, Civil, *In the Matter of Missouri Pacific Railway Company, Debtor, Wright, Et Al., Etc.*, v. *Group of Institutional Investors, Etc., Et. Al.* (Consolidated Appeals), on page 2, states:

"Subsection (d) of Section 77 provides that if the Commission approves a plan it shall thereupon certify the plan to the Court, together with a transcript of the proceedings before it and a copy of the report and order approving the plan, thus *fulfilling its administrative function.* Thereafter all formal proceedings are before the courts: the views of the parties, their interpretation of any new data, and their effect upon the reorganization requirements, must be submitted to the courts. The *Commission has consistently refrained from volunteering its views on new or changed conditions.* At such point in the proceedings it has felt that the question whether conditions have so changed as to require resubmission of the plan to the Commission for revision *is primarily one for the District Court*, before which the facts may be presented and the matter argued." (Italics ours). (Copy of the Commission's brief is found in Reply Brief of Debtor-Petitioner, U.S.S. Ct., Oct. Term, 1947, Cases Nos. 184-189.)

of this doctrine of administrative conclusiveness, a plan, once approved and certified by the Commission, becomes endowed with fatal finality. Nothing (in the practical sense) can stop it. Even a virtually unanimous application by the parties directly affected is of no avail to recall it." (See St. Louis-Southwestern and Missouri Pacific cases, below.)

III.

The Commission and the Court, for the first time, departed from the "kind of Alphonse and Gaston act" in the Missouri Pacific Railway Company, Debtor, case.

On May 24, 1947, the United States Circuit Court of Appeals for the Eighth Circuit, in Nos. 13367-73, both inclusive, *Wright, et al* v. *Group of Institutional Investors, etc. et al.* (Missouri Pacific plan appeals) entered the following order:

> "—It is Further Ordered by the Court that appellants serve a copy of the record and of their brief or briefs on the Interstate Commerce Commission and the Trustee of the Missouri Pacific Railway Company.
>
> "The Interstate Commerce Commission and the Trustee are hereby requested, if so advised, to file briefs stating their views respecting the issued raised by the appeals within the time for filing briefs of appellees. If found necessary to do so, the Commission may apply for further extension of time for filing its brief—."

In compliance with the above order the Interstate Commerce Commission by its attorneys, Daniel W. Knolton, Chief Counsel, and Daniel H. Kunkel, Attorney, Washington, D. C., filed its memorandum brief with the United States Circuit Court of Appeals for the Eighth Circuit in The Matter of Missouri Pacific Railway Company, Debtor. (A copy of this memorandum brief is attached as Appendix B to the Brief of Debtor-Petitioner, Nos. 184-189,

In The Matter of The Chicago, Rock Island and Pacific Railway Company, Debtor, October Term, 1947, in the Supreme Court of the United States, and will not be repeated here.) Howeveer, said memorandum brief stated, among other things, that:

> "While the plan is sufficiently elastic to permit of adjustment for a reasonable amount of debt retirement and interest payment, it is questionable whether the possibilities of the large retirements and expenditures and further cash accumulations which have occurred were contemplated.
>
> "It is submitted that these problems arising out of the substantial changes in conditions since the approval of the plan justify its further review by the Commission.
>
> "There are additional reasons which make it desirable that the Commission give further consideration to the plan. * * For these reasons the Commission is of the opinion that the present plan should be returned to it for reconsideration and revision, and it so recommends."

On September 9, 1947, the United States Circuit Court of Appeals for the Eighth Circuit, in said Missouri Pacific Railway Company case, entered the following order:

> "The above entitled appeals having come on for further consideration on this 9th day of September, A. D. 1947, before the Court at the Federal Court Room in the City of St. Paul, Minnesota, and it appearing that all of the appellants and likewise all of the appellees in these appeals who have filed briefs urge that the plan of reorganization involved herein should be referred back to the Interstate Commerce Commission;
>
> "And it further appearing that in addition to the briefs filed on behalf of the appellants and on behalf of the appellees, the Interstate Commerce Commission has, pursuant to the suggestion of this Court that it state its views with respect to the issued raised by

these appeals, filed a brief in which said Commission suggests that certain problems arising out of the substantial changes in conditions since the approval of said plan require its further review by the Interstate Commerce Commission;

"And this Court having heard counsel for the parties and having duly considered the same, and being of the view that because of the substantial changed conditions which were not anticipated by the Commission, but have become apparent since the order approving said plan of reorganization was entered, that the order of the District Court approving said plan should be vacated and set aside, and said plan should be returned to the District Court, with directions to the District Court to return the plan to the Interstate Commerce Commission to take such further evidence and make such further recommendations as to it shall appear proper:

"It is Therefore Ordered, that said order of the District Court entered on January 22, 1946, approving said plan of reorganization (No. 2604-B) be and the same hereby is vacated and set aside, and that said cause be and it is hereby remanded to the District Court with directions to return the plan to the Interstate Commerce Commission for further investigation, consideration and recommendation * * *."

IV.

Facts which warrant this Court in requesting the Commission to file briefs stating its view with respect to the issues raised in the petition for Writ of Certiorari.

The problems arising out of the substantial changes in conditions since the approval of the plan of reorganization of The Chicago, Rock Island and Pacific Railway Company, debtor, likewise justify review of said plan by the Commission, in the same manner as sought by the Commission in its memorandum brief filed with the United States Circuit Court of Appeals for the Eighth Circuit in the

Missouri Pacific Company case, to which we have referred in the previous points. Typical comparisons follow.

At June 30, 1947, the Rock Island held $84,503,000 of cash and temporary cash investments. At the same date the Missouri Pacific System (Missouri Pacific Railroad, Gulf Coast Lines, and International Great Northern), held $71,538,000 of cash and temporary cash investments. Net current assets at that date were $82,733,000 for the Rock Island and $72,649,000 for the Missouri Pacific System.

Rock Island cash and temporary cash investments were 53% of 1946 operating revenues and 652% of 1946 fixed charges on the old capitalization. For the Missouri Pacific System the ratios were 30% and 309%, respectively.

If Rock Island were to reduce its cash and temporary cash investments to 30% of 1946 operating revenues as has been done by the Missouri Pacific System, $36-½ million would be available for additional reduction of claims, and the road would still have $48 million of cash and temporary cash investments. That amount would be equal to 370% of 1946 fixed charges on the old capitalization, or, stated otherwise, if the road did no better than to break even on operating expenses, taxes, and rents, then the cash on hand, after spending $36-½ million, would be sufficient to pay fixed charges on the old (i. e., present) capitalization for the next 3.7 years.

In its Memorandum Brief of August, 1947, to the Circuit Court of Appeals, the Interstate Commerce Commission gave as one reason why the Missouri Pacific plan should be reconsidered the fact that, since the Commission's issuance of the Missouri Pacific plan, that system had paid $46,380,000 principal amount of claims. This figure did not include all the Iron Mountain bonds set forth in the plan, nor did it include interest to the effective date of the plan. Including those items, the total claims of Missouri Pacific System completely eliminated

(not including partial reductions) since the issuance of the I.C.C. plan, has been $70,064,000, or 8.4% of the total existing claims of $83,390,000 at the time of the plan. As a result of these claim settlements, $56,873,000 of new securities were released, an amount equal to 10.1% of the proposed new capitalization of $560,480,000 (assuming reduction from approximately $640,000,000 by open market operations as proposed in the plan).

Since the present Rock Island reorganization plan was issued by the I.C.C., that road has settled $18,458,000 principal amount of debt and $9,333,000 of interest claims (RFC, $13,719,000 principal and $7,130,000 interest; bank loans, $3,811,000 principal and $2,203,000 interest; and Peoria Terminal bonds, $928,000 principal). Application of $36,500,000 of cash to additional reduction of claims, as suggested above, would bring the total amount of claims eliminated since the I.C.C. plan was issued to $64,291,000, or 11.2% of the total claims of $572,789,000 set forth in the I.C.C. plan. (This is without counting $34,279,750 paid to various creditors on account in 1945.)

Furthermore, in the Rock Island plan the interest claims are computed to January 1, 1944, whereas in the Missouri Pacific plan they are computed only to January 1, 1943.

As heretofore stated, the effective date of the Rock Island plan is January 1, 1944. In the years 1944, 1945 and 1946 Rock Island has made gross expenditures for additions and betterments to road and equipment of $45,658,000, equivalent to 8.8% of the $514,727,000 investment in transportation property at the end of 1946. This gross expenditure in these years is equivalent to 12.8% of the I.C.C., approved new capitalization.

In contrast, the Missouri Pacific System in the *four* years 1943-46 (the Missouri Pacific plan effective date is January 1, 1943), made gross expenditures of $53,030,000 for additions and betterments to road and equipment, an

amount equivalent to only 7.1% of the $743,319,000 investment in transportation property at December 31, 1946. This gross expenditure is equivalent to only 9.4% of the I.C.C. approved capitalization of $560,480,000 (and to only 8.3% of said initial capitalization of approximately $40,000,000).

Thus the Rock Island Railway, like the Missouri Railroad, since the approval of its plan of reorganization, has made extensive expenditures for improvements of the property which will affect the earning power of the Railroad, and in both cases there have been (a) debt retirement, (b) cash accumulations, and (c) payments on claims, which make adjustments necessary in the distribution of cash and new securities. These have caused a substantial disturbance of the attempted balanced relationship in the treatment provided for various classes of creditors in the plan approved by the Commission.

Furthermore, an examination of the Transcript of Record in this case, pages 208-213, and the Exhibits which appear (at pages 236 to 248, both inclusive) show very conclusively that in any year the earnings of the Rock Island are much larger than were ever anticipated by the Commission when it approved the plan and that for the year 1947 the earnings, based upon the present rate, will be almost twice those which the Commission considered normal and on which it based its plan. Already in 1946 the earnings were over fifty percent larger than the $11,000,000 estimated by the Commission as normal. At what point, in the progression of larger and larger earnings, does the original estimate of "normal" earnings by the Commission become obsolete? It is here contended that that point has long since been reached and passed; that the District Judge so recognized, and that, as ordered by the District Judge, it is now proper for the Commission to be given a chance to correct its patent and indefensible error in estimating

the earnings and earning power of the debtor. The Committee on the Judiciary, House of Representatives, said at page 9 of said House Report 923:

> "* * * these procedural involvements (of the Rock Island) are
>
> "Entirely aside from the glaring contradictions elsewhere referred to in this report, such as those cases where after three agencies of the Federal government (the Commission, the Bureau of Internal Revenue, and the courts) had declared an equity worthless the carrier subsequently earned and paid to the government on that equity income and excess profits taxes nearly equal to or greater than the full par value of the allegedly 'valueless' equity. (See Table H. Infra.)."

Table H discloses the following facts as to the Chicago, Rock Island and Pacific Railway Company, Debtor:

a. Principal of funded debt as of December 31, 1945, $293,097,800.00;

b. Net current assets as of December 31, 1936, $8,668,181.00;

c. Disbursed to creditors in principal and interest (January 1, 1938 through November 30, 1946), $108,828,685.00 (this figure includes $34,279,750.00 disbursed in 1945 without designation as to application to interest or principal);

d. Federal income and excess profits taxes paid during ten years ended December 31, 1946, $82,065,427.00;

e. Gross capital expenditure during ten years ended December 31, 1946, $115,605,000.00, or a total of $306,499,-112.00 paid to creditors in principal and interest, Federal income and excess profits taxes, and gross capital expenditures; and

f. Net current assets, December 31, 1946, $77,720,848.00.

At page 245, Transcript of Record, Exhibit No. 4, appears the total net capital expenditures for road and equipment, January 1, 1940 to April 30, 1946. This figure

is a total of $37,246,965.49. Exhibit 3 (R. 245) shows that the total amount of cash and cash equivalent as of March 31, 1946, was $82,272,199.08. Exhibit 2 (R. 245) shows that between January 1, 1940, and April 30, 1946, the total decrease of the Debtor's debt in the hands of the public was $25,411,598.97.

The following table shows the latest available earnings of the debtor as reported by Moody's Investors' Service, compared with the Commission's estimate:

	Balance Available For Fixed Charges*	Times Fixed Charges Earned on Basis of Existing Capitalization*	Earned Per Share On Existing Stock	
			Pfd.	Common
Commissions "normal" Est. (See p. 437 of F.D. 10028, printed, record)	$11,000,000	0.83	Nil	Nil
Actual 1946	20,969,190	1.62	$7.87	$0.98
12 Mos. to 7-31-47	25,169,059	1.83	9.90	2.37
7 Mos. to 7-31-47	15,355,366	1.89	7.78	2.91

* Before Federal income tax, and based on old capitalization less amounts paid off, as of December 31, 1946.

An examination of the exhibits (R. 236-248, both inclusive) shows the following further facts which have developed since the Commission approved the plan of reorganization of the Debtor (January 3, 1944, as modified and approved by the Commission on May 1, 1944, effective date January 1, 1944,) and which were not anticipated by the Commission. They constitute problems arising out of the substantial changes in conditions since the approval of the plan by the Commission, namely:

In the 7-year period 1940 through 1946, inclusive, The Chicago, Rock Island and Pacific Railway Company, Debtor:

a. Earned its fixed charges on the old capitalization an average of 2.61 times annually;

b. Earned a total amount of $70,818,000.00 on the stocks wiped out by the plan, or a sum equal to $130.00 per share on the Preferred stock and $62.68 per share on the Common stock;

c. Increased its net working capital by $67,105,327.00 and increased its cash items alone by $67,948,546.00 even after (1) paying Federal income and excise profits taxes of $82,065,427.00; (2) disbursing to creditors in principal and interest $108,828,685.00 (January 1, 1938 through November 30, 1946); and (3) making gross capital expenditures of $115,605,000.00 (10 years 1937-1946).

The earnings of the debtor for August 1947 and for the first eight months of 1947 are now available. Net earnings in August 1947, available for the payment of interest, were 25% greater than for the same month last year. The net earnings available for the payment of interest (before the deduction of taxes) for the first eight months of 1947 were $18,504,702, or at the annual rate of $27,757,056—more than two and one-half times the anticipated earnings of $11,000,000 upon which the plan was based—and more than twice the annual interest of $12,525,036 accruing on all the old indebtedness, including the convertible bonds, in satisfaction of which only 17% is to be paid under the plan.

Here are the official figures:

Earnings of Rock Island.

January 1 - August 31, 1947

Earnings (after deduction of depreciation, amortization, and federal income taxes, and before deduction of interest accrued but unpaid on the old bonds)	$ 14,584,702.00
Federal income taxes (added to earnings because taxes are deducted after bond interest has been paid)	3,920,000.00
Total earnings, for 8 month period, available for interest on bonds	18,504,702.00
1947 annual rate of earnings available for bond interest	$ 27,757,056.00

Interest on the old convertible bonds was earned more than 11½ times during the first eight months of this year, as shown by the following figures:

Earnings available for interest	$18,504,702.00
Interest on old bonds senior to convertibles	7,221,600.00
8 months' earnings available for interest on convertibles	11,283,102.00
8 months' interest on convertibles	$ 968,400.00

The 8 months' earnings available for interest on the convertibles is greatly in excess of the entire payment proposed in the plan for the full satisfaction of such convertibles.

In its Memorandum Brief on Missouri Pacific referred to above, the I.C.C. stated that the return of the Missouri Pacific plan would give it an opportunity of reviewing the provisions as to the selection of reorganization managers and of the first board of directors of the new company, and went on to say "The holdings of present securities of some

of the parties entitled under the plan to nominate appointees probably have materially decreased from their original holdings, notably in the case of the Institutional Group of Holders of Missouri Pacific First and Refunding Bonds. In the case of the Reconstruction Finance Corporation, whose loan has been satisfied, there will be an initial failure of appointment."

In the Rock Island plan five reorganization managers are to be appointed: one by the Protective Committee for the General 4s; one by the Protective Committee for the First & Refunding 4s and Secured 4½s; one by the Mortgage Trustees of the General 4s, First & Refunding 4s and Secured 4½s; one by the RFC and bank claimants, and one by the Protective Committee for the branch line bonds and the Trustee of the Convertible bonds. The Reorganization Managers are empowered to select the initial board of directors of the new company.

Since the Rock Island plan was written, the RFC and bank claims have been paid off, so that, in the language of the I.C.C., there would be "an initial failure of appointment," except that actually and what is worse these appointments are to be made by or on behalf of whose interest in the proceedings has vanished.

Thus, the Protective Committee for Rock Island First & Refunding 4s and Secured 4½s has been dissolved and the holders of deposited bonds have been requested to withdraw them from deposit with the Committee. The reorganization plan provides that in the event of termination of a Protective Committee the appointment of that Committee's reorganization manager should be made by the former chairman of the Committee, or, in case of his failure promptly to act, by a majority of the former members of such Committee. The Chairman of the Committee in question was Dwight S. Beebe of Mutual Life Insurance Company of New York. In 1932 his company owned

$5,200,000 of Rock Island First & Refunding 4s and Secured 4½s, but at the end of 1946 it owned no Rock Island bonds of any issue. The other members of the Committee were Stedman of the Prudential, Walker of the Northwestern Mutual, Hagerty of the Metropolitan, and M. P. Callaway, Bankruptcy Trustee of the Central of Georgia. In 1932 Northwestern Mutual held $4,806,000 of First & Refunding 4s and Secured 4½s, but at the end of 1946 it held only $500,000. Callaway apparently represents none of the bonds and presumably was named to the Committee at the time he was Trust Officer of the Guaranty Trust, a connection long since severed. The only member of the former Protective Committee whose company held any sizable amount of Rock Island bonds of these two issues at the end of 1946 is Hagerty of the Metropolitan, which held $9,258,000 of First & Refunding 4s and Secured 4½s at that time. Unless a change is made in the plan, the members of the former Protective Committee in question undoubtedly would defer to Hagerty's wishes, and, as a consequence, Metropolitan would select one of the Reorganization Managers by itself.

But, Alleghany Corporation, owning $17,315,000 of First & Refunding 4s and Secured 4½s, would have no voice in the naming of the Reorganization Manager to represent the two issues of bonds of which it is the largest reported holder.

WHEREFORE, Petitioners pray that their prayer contained in their petition for Writ of Certiorori be granted, that upon the issuance of the Writ of Certiorari this Court direct the petitioners and the respondents to serve upon the Interstate Commerce Commission and the Trustees of the Debtor a copy of each petition, brief in opposition to petition, and reply brief filed in this cause, and that the Interstate Commerce Commission and the Trustees of the Debtor be requested to file briefs with this Court stating

its and their views respecting issues raised by the petitioners and the respondents within a time to be fixed by this court.

Dated at Chicago, Illinois, October 2, 1947.

Respectfully submitted,

CARTER H. HARRISON, JR., Et. Al., as the Protective Committee for The Chicago, Rock Island and Pacific Railway Company 7% and 6% Preferred Stock,

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